

## **Inventory 2007**

### Introductory Part

#### General

This is the first public inventory of the EDPS as an advisor on proposals for legislation and related documents, published in December 2006 on [www.edps.europa.eu](http://www.edps.europa.eu).

This inventory forms part of the annual work cycle of the EDPS. Once a year the EDPS reports retrospectively on his activities in the Annual Report. In addition, the EDPS publishes an inventory of the intentions of the EDPS in the area of consultation for the next year. As a result, the EDPS reports twice a year on his activities in this area.

The background of this inventory can be found in the Policy Paper of 18 March 2005, *The EDPS as an advisor to the Community Institutions on proposals for legislation and related documents*. In this paper, the EDPS laid down his policy in the area of consultation on legislative proposals, one of his main tasks based on Articles 28 (2) and 41 of Regulation (EC) No. 45/2001. The working method of the EDPS is described in Chapter 5 of this paper<sup>1</sup>. An important part of this working method is the selection and planning (including a regular review of this selection and planning), needed in order to be effective as an advisor. This inventory was announced in the EDPS Annual Report 2005. The EDPS has the general task of promoting data protection. To fulfil this task an overview of the different policy areas of the EU is needed.

The inventory consists of this introductory part and an annex of the most relevant Commission-proposals and other documents that have been recently adopted or that are programmed<sup>2</sup>. The annex will be updated on a regular basis (normally every 3 months). Once the EDPS has given his opinion on a document (or another public reaction<sup>3</sup>), the document will be deleted from the Annex, although it has to be underlined that the involvement of the EDPS in the legislative process does not stop once his opinion has been issued. The opinions of the EDPS can be found elsewhere on the EDPS-website (under 'opinions').

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<sup>1</sup> As announced in this paper, the EDPS will be available for informal consultation before the adoption of a Commission proposal and will, after adoption, issue a formal opinion (to be published in the Official Journal). Equally, the EDPS will follow the later stages of the legislative process and will, where appropriate, address himself to the institutions concerned.

<sup>2</sup> The column with the two colours (red and yellow) shows the priority status of each topic for the EDPS:

*Red* => the EDPS *will* issue an Opinion (high priority)

*Yellow* => the EDPS *may* issue an Opinion or react in another formal way

<sup>3</sup> The annex also mentions, where appropriate, the cooperation of the EDPS with the Article 29 Working Party on data protection, as an instrument for the EDPS to fulfil his task.

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The main sources of the inventory are the Commission's Work Programme for 2007 and several related planning documents of the Commission<sup>4</sup>. The inventory has been prepared by the Staff of the EDPS. In the preparation process, several stakeholders within the Commission have been given the possibility to give their input. This input is highly appreciated.

### Short analysis of most important trends and risks

As was demonstrated in the Annual Report 2005, the consultative activities have until now mainly been focused on proposals related to the Area of Freedom, Security and Justice (in its wider sense, including Title VI of the EU-Treaty). More in particular, many activities in this area relate to the increased need for storage and exchange of personal data for law enforcement purposes and the safeguards for data protection that (should) go hand in hand with that trend. In some cases, the instrument chosen for a better exchange of information was the establishment or improvement of a database - with limited functions - on a European level (SIS II, VIS). Another phenomenon that required the full attention of the EDPS was the access and use for law enforcement purposes of personal data that had been collected for other purposes (immigration and visa, air passenger data and communications data).

This trend was described in the Annual Report 2005, continues in 2006 and is reflected in the important part dedicated to activities initiated by Directorate General JLS of the Commission in the annex. The main elements of a new legal framework for storage and exchange of personal data were proposed by the Commission in 2005; new proposals are announced by the Commission to complete the framework, such as a proposal for a new legal framework on Europol. Another important issue that will remain on the table will be the 'legal loophole' in data protection in cases where data collected by private parties are used for law enforcement purposes. The use of biometrics will become more and more important.

In the near future other areas will also require attention from the EDPS. These other areas are:

- **Electronic Communications and Information Society** (DG Infso). This area requires specific attention. Economic goals in view of a further development of an information society require a competitive EU regulatory framework. This includes a review of the EU regulatory framework (including Directive 2002/58/EC) and an emphasis on information security (including protection of personal data) and on the possibilities of RFID (related to the "internet of things"). A specific area of attention is the combat of spam, spyware and malicious software.
- **Public health** (DG Sanco). There is a general trend for increased collection and exchange of information, related to health which by nature - health data are sensitive data - presents risks for data protection. This trend is even more important in the light of the growing digitisation of health data and in the light of the notion of traceability, which means that personal data are stored in operational health care units in such a way that, if a health issue occurs that may threaten the health of that or another person, the data can be traced. Four specific areas have been identified (health information systems, e-health, safety of human products and immediate threats to public health).
- **Work related issues** (DG Emploi). The Social Policy Agenda of the Commission (2005-2010) announced an initiative on *inter alia* the protection of the personal data of workers (in the meantime, this initiative is postponed). Moreover, the

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<sup>4</sup> The Work Programme ([http://ec.europa.eu/atwork/programmes/index\\_en.htm](http://ec.europa.eu/atwork/programmes/index_en.htm)) includes a list of Strategic Initiatives and a list of Priority Initiatives. Other proposals are mentioned in a full version of the Work Programme (available on the same address). Most reference numbers and estimated dates of adoption stem from the programme. In most cases where the Commission did not communicate such a number and/or date, the EDPS does not communicate this information either.

- implementation of Regulation (EC) No 883/2004 on the coordination of social security systems requires the exchange of personal data between Member States.
- **Anti-Fraud** (Olaf). Olaf is of special importance to the EDPS, since it is a Community body with executive powers in the Member States, including *by nature* processing of sensitive data as well as the exchange of information between on the one hand Olaf and on the other hand law enforcement authorities of the Member States, authorities at EU-level such as Europol and third countries and international organisations. As far as Olaf is concerned, there is a close link between consultation of the EDPS and supervision by the EDPS.
  - **Transparency-issues** (SG Com). The EDPS will give much attention to initiatives aimed at modifying Regulation Nr. 1049/2001 regarding public access to documents, which must clarify the relation between the legislation on public access and data protection (the EDPS published a background paper on this issue in 2005<sup>5</sup>).

Finally, it has to be kept in mind that this list of policy areas is not exhaustive. The developments in the areas of **consumer protection** and **(financial) services** - although no specific legislative measures are foreseen as yet - require specific attention from the EDPS.

#### Priorities for the EDPS for 2007

The slogan of the EDPS is: *privacy as a condition for success*. To be successful, the EDPS aims to make visible why data protection matters. Subsequently, he addresses essential needs of data protection such as the need for harmonisation on an EU-level and the need to deal with invisibility (as a result of the invisibility and pervasiveness of techniques) and with irreversibility (accepting a lower level of protection will normally not be undone in a later stage). Within this perspective, the priorities for 2007 are as follows:

1. Carefully following the storage and exchange of information in the Area of Freedom, Security and Justice with emphasis on:
  - adequate data protection, including the rules on effective division of responsibilities and on supervision of responsible entities.
  - pro's and con's of central databases and of networks of data
  - use for law enforcement of data collected for other purposes (and extension of functions of databases<sup>6</sup>), including for purposes of data mining
  - biometrics
2. Specific attention to the Communication of the Commission on the future of Directive 95/46/EC. The reaction of the EDPS will be given in close cooperation with the other stakeholders, such as the Article 29 Working Party on data protection.
3. Targeting on developments in the Information Society, with emphasis on:
  - longer term perspective of an information society where every person can be traced, for instance because of the growing importance of RFID
  - modification of Directive 2002/58/EC
  - RFID and ambient intelligence
  - spam

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<sup>5</sup> Background Paper *Public access to documents and data protection*, 12 July 2005 (available on [www.edps.europa.eu](http://www.edps.europa.eu)).

<sup>6</sup> Interoperability: Communication on illegal immigration introducing a comprehensive entry/exit database.

4. Including 'public health' as an essential area for the EDPS, with emphasis on health information systems, e-health, safety of human products and immediate threats to public health. The principle of traceability will play an important role.
5. In the area of Olaf:
  - assessment of regulations covering Olaf's work, whilst taking the supervisory task of the EDPS on Olaf into account.
  - emphasis on safeguards for the exchange of information between Olaf and authorities of the Member States, Europol and third countries and international organisations, including safeguards for an effective supervision
6. In the framework of transparency, giving attention to (possible) modification of Regulation Nr. 1049/2001
7. Horizontal themes:
  - The first pillar, third pillar and the legal loophole (in particular regarding the use of data kept by the private sector for law enforcement purposes). The interpretation of Article 3 (2) of Directive 95/46/EC will be highlighted (also with a view to the possibilities of using Article 42 EU, the so called "passerelle")
  - References to data protection law in specific EC/EU-legislation
  - External aspects of data protection, such as the transfer of data to third countries. The activities of the EDPS will be closely linked to the activities of Article 29 Working Party on data protection, with respect to the transfer of passenger data<sup>7</sup>
  - Privacy Enhancing Technologies (PET)
8. Other:
  - Consolidate working method. This includes establishing a specific method for 'Commission-decisions' (either or not within framework of "comitology") and developing ideas on the usefulness of EDPS-involvement in policy documents preceding legislative proposals (such as green papers and other communications).
  - Intensify relations with the Council Presidency and the Council Secretariat (related to the most relevant Working Groups). The standard practice to present EDPS-Opinions in Council Working Groups must be continued.
  - Maintain intensive relations with the LIBE-committee of the European Parliament and extend relations to other committees of the EP

December 2006

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<sup>7</sup> Of course, the negotiations with the United States of America on a new agreement on PNR-data will play a central role within these activities.